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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/776,754

02/11/2004

Lukas Eisermann

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3616

46333 7590 01/24/2008  
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EXAMINER

SCHILLINGER, ANN M

ART UNIT

PAPER NUMBER

3774

MAIL DATE

DELIVERY MODE

01/24/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

Application No.

10/776,754

Applicant(s)

EISERMANN, LUKAS

Examiner

Ann Schillinger

Art Unit

3774

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 05 March 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-22 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-22 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Claim Rejections - 35 USC § 103*

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-8, 10, and 13-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ferree (US Pat. No. 6,432,107). Ferree discloses the following: a fusion-promoting prosthetic device for insertion into an intervertebral space, comprising a sagittally-extending plate (420) having caudal (bottom portion) and cephalad (top portion) edges, the caudal edge being adapted for complete insertion within a first vertebral body (208) and the cephalad edge being adapted for complete insertion within a second vertebral body adjacent to the first vertebral body (210), a first transverse plate (upper element 560) connected to the sagittally-extending plate, and a second transverse plate (lower element 560) connected to the sagittally-extending plate, the first and second transverse plates being adapted for complete insertion within the intervertebral space (Figure 5K); openings (202), a bone ingrowth coating (col. 4, lines 4-15), and the use of bone grafts (col. 2, lines 7-17). In Figure 3C, Ferree discloses the sagittal plate extending through the transverse plates as an alternate means for connecting these two parts of the prosthesis. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to use the embodiment displayed in Figure 3C as an alternate means for stabilizing the prosthesis that will still allow the device to properly support the spine.

Please note that it has been held that the term "integral" is sufficiently broad to embrace constructions united by such means as fastening and welding.

Claims 9, 11, and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ferree in view of Jackson (U.S. Pub. No. 2002/0116065). Ferree does not disclose altering the angles of the sagittal and transverse plates to a measurement other than 90° to allow the implant to better fit into the intervertebral space. However, Jackson discloses an intervertebral implant utilizing this technique.

Jackson discloses the following regarding claim 9: the prosthetic device of claim 8 wherein the second transverse plate is angled relative to the sagittally-extending plate, the angulation of the first and second transverse plates corresponding to an angular relationship defined between the first and second vertebral bodies (paragraph 0070).

Jackson discloses the following regarding claim 11: the prosthetic device of claim 1 wherein the caudal edge is beveled at a posterior portion thereof (bottom of element 11 is not at a right angle with the vertebrae in Figure 8).

Jackson discloses the following regarding claim 12: the prosthetic device of claim 1 wherein the cephalad edge is beveled at a posterior portion thereof (top of element 11 is not at a right angle with the vertebrae in Figure 8).

Therefore it would have been obvious to one of ordinary skill in the art at the time the invention was made to alter the transverse and/or sagittal plates of the implant so that it can fit into the desired intervertebral space.

***Response to Arguments***

Applicant's arguments with respect to claims 1-22 have been considered but are moot in view of the new ground(s) of rejection. Upon further review of the Ferree reference, the alternate embodiment cited above has been interpreted to meet the claim limitations requiring that the sagittally extending plate extends through the first and the second transverse plates.

*Conclusion*

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ann Schillinger whose telephone number is (571) 272-6652. The examiner can normally be reached on Mon. thru Fri. 9 a.m. to 4 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Corrine McDermott can be reached on (571) 272-4754. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Ann Schillinger  
January 17, 2008

  
CORRINE McDERMOTT  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3700